Foreign Financing

Under the Edge Act

Guaranty Trust Company
of New York

Foreign Financing

Under the Edge Act

Approved December 24, 1919

Guaranty Trust Company of New York
140 Broadway

FIFTH AVENUE OFFICE
Fifth Avenue and 43rd Street

MADISON AVENUE OFFICE
Madison Avenue and 60th Street

LONDON OFFICE
32 Lombard Street, E. C.

LIVERPOOL OFFICE
27 Cotton Exchange Buildings

PARIS OFFICE
1 and 3 Rue des Italiens

HAVRE OFFICE
122 Boulevard Strasbourg

BRUSSELS OFFICE
158 Rue Royale

Foreign Financing

under

The Edge Act

OUR merchant marine and our foreign trade, both of which were built up and maintained during the war at so great a cost, are threatened by new conditions which may not only hinder their further development, but even challenge their achieved position. The principal dangers are the foreign exchange situation, and the inability of most American sellers and banking institutions to grant long-term credits to European purchasers of our raw materials, machinery and manufactured articles. Since the termination of the Great War, the future of our international trade has been uncertain, and close students of the financial and economic situation prevailing in European countries have viewed with great concern the decrease in our export trade.

During the past six months of 1919, an acutely serious situation has arisen by reason of the sharp break in European exchanges. The French franc, the

Italian lire, and the German mark have all dropped far below par and even the pound sterling has fallen though not to the extent of the others. The result has been to increase greatly the already high cost of American goods to purchasers in Europe, as the merchant or manufacturer buying American dollars to pay for the goods has been forced to pay much more than a dollar, depending on the percentage of decrease in the value of the European money used in the purchase. Accordingly, the cost of American goods has become almost prohibitive and as a natural consequence, if this condition continues, we shall find that the demand for our goods will become less and our export trade will be seriously impaired. Production must be stimulated if we are to compete with other countries and keep our industries going, and a foreign market must be maintained for the disposition of our surplus raw materials and manufactures on a basis which makes it attractive for the foreigner to buy our goods. Otherwise, before long we may find ourselves being outstripped by England and Germany, our greatest rivals before the war.

Foreign Financing under Federal Control

With the object of remedying the foreign exchange situation, extending quick credits to European purchasers and thus increasing the demand for our goods,

stimulating our foreign trade and further developing our new merchant marine, Congress, during the past year, has enacted two laws, the McLean Act and the Edge Act, supplementing existing legislation. Even as far back as 1913, steps were taken to procure for us a larger participation in foreign trade and commerce when the Federal Reserve Act was enacted providing, among other things, that any national banking association having a capital and surplus of at least $1,000,000 might, upon securing the approval of the Federal Reserve Board, establish branches in foreign countries and dependencies of the United States. Prior to that time, the financing of our foreign trade was done mostly by the great English banking houses and by a few strong private banking establishments of New York which had foreign branches in Europe. The small independent banks of the country could only help to a very limited extent.

The Federal Reserve Act, however, gave our national banks an opportunity to compete on nearly even terms, but few felt disposed to risk their capital in foreign branches, and the need of further legislation was clearly indicated. In 1916 further steps were taken in this direction and a law amending Section 25 of the Federal Reserve Act, enacted on September 7, of that year, permitted national banks having a capital and surplus of at least $1,000,000 to co-operate in the establishment or ownership of American banks or corporations principally engaged in foreign banking, by investing

amounts not to exceed 10 per centum of their capital and surplus in such institutions "chartered or incorporated under the laws of the United States or of any State thereof." Certain banking institutions have organized banking corporations of the kind contemplated by the 1916 amendment, for the purpose of financing American exporters and importers, but from some sources, it is stated, appeals have been made for Federal incorporation.

The arguments urged in favor of the enactment of such a law are that the time will probably come when the conflict of the dual control exercised by the Federal Reserve Board and by the banking departments of the states may be a matter of embarrassment, or may operate to restrict the activities of the banking corporation, and that such a banking corporation being essentially a national enterprise, the ownership of whose stock by national banks was authorized by an Act of Congress, should be entitled to the benefits and protection of a Federal charter which would prove of great value in competing for business in foreign countries. A Federal incorporation act substantially similar to the Edge Act, was later proposed by the Federal Reserve Board and passed the Senate, but the bill never passed the House.

On September 17, 1919, the McLean Bill became a law, under the provisions of which national banks, without regard to the amount of their capital and surplus, are permitted to subscribe in amounts not in excess of

5 per centum of their capital and surplus to the capital of corporations of the kind contemplated by the Edge Act, thus enabling national banks to further contribute to the financing of our foreign trade.

Purpose and Effect of Edge Act

The Edge Act, which has been strongly indorsed by the Federal Reserve Board, was introduced in the United States Senate on July 15, 1919, and became a law upon being signed by the President on December 24, 1919. With the enactment of this law, supplementing the amendment of September 7, 1916, and the McLean Act, it is hoped that much of our great foreign trade can be retained to the benefit of American manufacturers and producers. The Act provides for the Federal incorporation and regulation of banking institutions for the purpose of engaging in international or foreign banking, or other foreign financial operations or for engaging in such operations in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in such places.

Two distinct classes of corporations are contemplated, although the line of demarcation between them may not always be closely drawn—one class doing principally a banking business, the other an investment business, taking long-time paper, including bonds and mortgages and issuing their own debentures against them. The class of corporations carrying on a banking

business may conduct nearly every kind of financial operation, but may not receive deposits in the United States except such as may be incidental to or for the purpose of carrying out transactions abroad. Both classes of corporations are prohibited from carrying on any part of their business activities in the United States except such as in the opinion of the Federal Reserve Board may be incidental to their foreign or international business. They may not become members of the Federal Reserve System and are not authorized to invest in any corporation, other than a banking corporation, an amount in excess of 10 per centum of their own capital and surplus, without the approval of the Federal Reserve Board.

The practicability of financing our export trade through the organization of such corporations as are contemplated by the Edge Act, is clearly expressed by the following statement of Senator Edge:

"The procedure under the prospective law is simplicity itself; it is merely the application to international trade of the accepted method by which John Doe sells his business to penniless Richard Roe and yet obtains actual cash payment in the transaction. The American exporter or manufacturer may sell his goods to an impoverished foreign purchaser—a foreign government or a private concern. One of the proposed corporations then may accept collateral from the purchaser, acceptable to the Federal Reserve Board, and against this issue debentures to sell to investors, and the money so

received will be paid to the American seller. Through the powers granted to these proposed corporations they may accept even mortgages on the plants or other real property of the purchasers * * *. Thus a foreign concern in need of raw material may obtain it by giving a mortgage on its plant, and eventually by turning this raw material into finished product will be able to redeem its collateral and to put aside a little profit besides."

Senator Owen in advocating the passage of the bill in the Senate paid tribute to the part played by the Guaranty Trust Company of New York and other New York banks in building up our foreign trade, but stated that such institutions were carrying as large an amount of foreign credit instruments as they could afford to carry, and that unless the mechanism were provided by which these foreign credits could be sold to the American investor there was no way available, on the vast scale required, to rehabilitate Europe by restoring the raw materials and machinery required to place it on the highly productive basis it occupied before the War. At the present time there are fairly adequate facilities for the granting of thirty, sixty, or ninety day credits to European purchasers, and some member banks of the Federal Reserve System, of which the Guaranty Trust Company of New York is one, are effectively participating in such short-term financing.

The granting of long-term credits, however, for pe-

riods beyond ninety days, which are much needed by the European purchaser of our goods, offers a far more serious situation and present facilities are admittedly inadequate. Let us suppose, for instance, that a corporation whose properties are in the devastated section of France desires to buy American machinery to start rebuilt factories in operation, and that it desires to buy on credit, giving as security for the purchase price, only corporate bonds which mature eight or ten years hence. Even though satisfied as to the safety of the security offered as collateral for the extension of the credit, the American manufacturer is in most cases unable to carry it until maturity because this would tie up and deprive him, for many years, of the use of the capital which he requires in his business. Therefore, the seller is compelled to lose the sale unless the bonds can be quickly converted into cash. It is possible here to relieve the situation by an arrangement made with a corporation organized under the Edge Act to take such foreign securities, advance the cash, and within such limitations as the law and the Federal Reserve Board prescribe, issue its own notes which could then be offered to the public for investment. By this method the purchaser at once receives the purchase price, and the European buyer obtains the goods. The credit is successfully passed to the American investor.

There are many institutions abroad operated upon a similar plan that specialize in financing foreign trade by the acquisition, disposition and rehypothecation of

securities. Until the passage of the Edge Act, there was no Federal statute that provided for the organization of such corporations, and before the passage of the McLean Act, national banks having a capital and surplus of less than $1,000,000 were not authorized to invest in corporations of the kind now contemplated by the Edge Act.

The value of the Edge Act lies in this, namely, that it provides for the organization of corporations having the right to engage in international and foreign banking, in which national banks may participate to a limited degree, thereby affording a means to make available quick and large capital for the purpose of extending credit to Europe. In short, the Act provides a sound, well-regulated system of financing our foreign trade whereby such collateral as foreign purchasers possess may be taken in payment of American goods. The new opportunities of the Edge Act, however, should not be overestimated, as corporations organized under state laws have been financing foreign trade in substantially the same manner as therein provided, the Edge Act merely adding as additional inducement, the prestige which Federal incorporation and Federal regulation offer.

Mr. Gilbert H. Montague, a reputed legal authority who has specialized on industrial combinations formed for export trade, in a recent analysis of the provisions of the Edge Bill, said:

"The problem is very similar to that of an American

street railway, which needs electrical equipment, and can pay for it only with its corporate bonds maturing ten years hence. For many years, various electrical equipment manufacturers have maintained subsidiary companies which, in instances like these, have taken street railway bonds, and deposited them, together with other bonds accepted from other customers in purchase of electrical equipment, with a trust company, under a trust agreement to secure an issue of the subsidiaries' own notes, which the subsidiaries have then sold to institutions and individuals for permanent investment. The money which the investing public has thus paid to the subsidiaries, in exchange for the latter's notes, has, in effect, returned through the subsidiaries to the electrical manufacturers to pay them for the electrical equipment which they have sold to the street railway. Thus, the street railway has bought on long-time credit, but this long-time credit has been carried by the investing public, and not by the electrical manufacturers or their banks.

"Instead of themselves organizing subsidiary companies to finance sales to their foreign customers, American manufacturers, in some instances, may best be served by leaving this work to be done by their banks, collectively and cooperatively. One hundred million dollars of purchases by the French Government from American manufacturers during the European war, were thus successfully financed, and eventually fully paid for, by a credit operation which has now become history.

"On July 14, 1916, the American Foreign Securities Company was incorporated in Delaware, by a group of American bankers, to acquire, by purchase or otherwise, and to hold or dispose of stock, bonds or obligations of any foreign or domestic government or corporation. On July 18, 1916, the Company entered into a contract with the Government of the French Republic, whereby the Company made the French Republic a loan of one hundred million dollars, bearing interest from August 1, 1916, and payable July 31, 1919. Unlike the examples already considered, the Company not only took the note of the French Government but also insisted that the French Government deposit collateral with the note. To secure the payment of principal and interest of the loan, the French Republic pledged various securities with the Company and authorized the Company to rehypothecate these securities. The value of these securities was calculated to be one hundred and twenty million dollars, and the French Government agreed to pledge from time to time additional securities so that the calculated value of the collateral should always be twenty per cent. in excess of the principal of the loan. The collateral pledge included obligations of the Governments of Argentina, Sweden, Norway, Denmark, Switzerland, Holland, Uruguay, Egypt, Brazil, Spain, Province of Quebec, Suez Canal, and various United States and Canadian corporations. Under its authority to rehypothecate these securities, the Company deposited $126,526,534 worth of them with 'a financial institu-

tion' in New York, as trustee, under a trust agreement to secure $94,500,000 of the Company's three year, 5% gold notes, dated August 1, 1916 and payable August 1, 1919, which notes the Company publicly offered for general sale in July, 1916 at 98 and interest. Throughout the war, these notes maintained a high value, and on August 1, 1919 they were paid in full. Meanwhile, the Company paid dividends averaging more than eight per cent. per annum upon its $10,000,000 of capital stock.

"Instead of individually organizing subsidiary companies like the electrical equipment manufacturers above described, or of leaving this work to be done by their banks, upon the analogy of the American Foreign Securities Company above described, American manufacturers in the same line of business may, in some instances, best finance their sales to foreign customers by collectively and cooperatively organizing and operating their own investment and financial corporation for that purpose. Such an institution, with a capitalization of upwards of one hundred million dollars, is already under consideration, according to newspaper reports, by a group of American manufacturers of railway equipment who, it is stated, will themselves take the leadership in the institution, and will depend for expert financial and banking assistance and for the marketing of their securities when issued upon their affiliated banking connections and upon security-issuing houses associated with them in the enterprise.

"European bankers, somewhat more than American bankers, have more or less permanently invested their own funds in long-time credits, and have thus assimilated the standpoints of both the manufacturer and the banker which, excepting possibly in the public utility field and the electrical equipment field, and more recently in a few instances in the foreign field, have not often been combined in the United States. Danger is always possible, of course, in any departure from the banker's strict standards of credit. Inertia, however, is no less possible in the inelastic application to long-time credits of standards to which bankers are accustomed in the short-time credits which constitute their business. In the future financing of the American export trade, neither the banker's standpoint nor the manufacturer's standpoint can be disregarded. The most fortunate results, it is believed, will be obtained by a policy which fairly reflects both points of view.

"How successful may be investment in financial institutions which have attained this golden mean appears from the history of some of the English, Scotch and Swiss 'investment trusts.' These are institutions for the acquisition, disposition and rehypothecation of securities particularly in foreign trade and are operated substantially upon the plan of the electrical equipment subsidiaries above described, and began to be formed in Great Britain during the third quarter of the last century. Like our own American life and fire insurance

companies, these investment trusts have pursued the policy of selecting their securities in various lines of trade and from all parts of the world. The Investment Trust Corporation, Ltd., of London, for example, in its statement for 1917, shows 315 kinds of investments; the Second Edinburgh Investment Trust, Ltd., of Edinburgh, Scotland, for the same year, showed 235, and the Metropolitan Trust Company, of London, showed 220. These investments included foreign government issues, municipal loans, mortgage bonds, preferred and common shares in railroads, public utilities, banking, commercial and industrial corporations. The Investment Trust Company, Ltd., of London, is capitalized for $10,000,000 and has outstanding $10,000,000 in 4 per cent. bonds, and during the ten years expiring in 1917 paid dividends averaging about 12 per cent. per annum upon its common stock. The Second Edinburgh Investment Trust, Ltd., of Edinburgh, Scotland, is capitalized for $2,250,000 and has outstanding $1,950,000 in 4 per cent. bonds and during the nine years expiring 1916 paid dividends averaging 12 per cent. per annum upon its common stock. The Metropolitan Trust Company, Ltd., of London, is capitalized for $4,000,000 in 4 per cent. bonds and during the ten years expiring 1918 paid an average of 12 per cent. per annum upon its common stock. The Bank for Electrical Securities of Zurich, Switzerland, which specializes in the securities of public utility companies, and the Franco-Swiss Company of Geneva, Switzerland, which special-

izes in city and railroad bonds, have had almost as great a development."

Financial corporations of the kind contemplated by the Edge Act have already been organized, with very broad powers, under the statutes of the several States. Among these institutions may be mentioned the Asia Banking Corporation, the Mercantile Bank of the Americas, Inc., the Foreign Discount Corporation, etc. Some of these corporations are now partially under the control of the Federal Reserve Board where national banks contribute to their capital, since they are required to restrict their operations and conduct their business in such manner and under such limitations as the Federal Reserve Board may prescribe. It was felt, however, that control through agreement is not as satisfactory as that exercised through incorporation under a Federal act.

The enactment of the Edge Act should prove of especial value to corporations that have combined under the Webb-Pomerene Act for the purpose of carrying on an export business, since in effect, it affords a practical method under Federal supervision, whereby industrial or producing combinations may extend large credits abroad. A group of manufacturers, for instance, who have formed a combination under the Webb-Pomerene Act to sell their products abroad may now combine to finance such sales and thus, in the language of Senator Edge, "will be able to keep all the reins in their own hands."

Mr. W. P. G. Harding, Governor of the Federal Reserve Board, in urging the passage of the measure, made the following statement: "The Board knows no one way in which the present European credit situation may be more effectively dealt with than by the incorporation of institutions of the kinds provided for in this bill, and anything that betters that situation assists not merely in the gigantic task of reconstruction in Europe, but also in providing a market for our own exports and in developing our foreign commerce in a most effective and satisfactory way."

Synopsis of the Edge Act

Organization of Corporations

THE statute provides that any number of persons, not less than five, may form a corporation of the kind authorized by the law, the life of which shall be twenty years, unless sooner dissolved by act of the shareholders owning two-thirds of the stock, or by an act of Congress, or unless its franchises become forfeited by violation of law. A corporation by a vote of the shareholders owning two-thirds of the stock, may, at any time within two years prior to the date of the expiration of its corporate existence, apply to the Federal Reserve Board for an extension thereof for a period not exceeding twenty years and upon approval by the latter, the corporate existence shall be so extended unless sooner terminated in one of the ways above explained. A corporation may go into voluntary liquidiation by a vote of the stockholders owning two-thirds of the stock.

Persons desiring to enter into articles of association must specify in general terms, the objects for which it is formed, which articles may contain any provisions not

inconsistent with law that the association may choose to adopt for the regulation and conduct of its business. The details regarding the drawing up of such articles are prescribed by the law which requires, among other things, that the name assumed by the corporation be approved by the Federal Reserve Board.

Capital Stock and Dividends

A capital stock of at least $2,000,000 is required for incorporation under the law, one-fourth of which must be paid in before the corporation is authorized to begin business, and the remainder in bi-monthly installments of at least 10 per centum on the whole amount to which the corporation shall be limited. The capital stock may be inereased at any time, with the approval of the Federal Reserve Board, by a vote of two-thirds of the shareholders, or by unanimous consent in writing of the shareholders without a mecting. Any such increase must be fully paid in within ninety days after approval by the Federal Reserve Board. A corporation may reduce its capital stoek in a like manner, but not below $2,000,000, and is prohibited, during the time its operations continue, from withdrawing or from permitting to be withdrawn, any part of its capital in the form of dividends or otherwise. The directors may semi-annually declare a dividend, but before the declaration thereof, one-tenth of the net proceeds of the

preceding half year must be carried to the surplus fund until it amounts to 20 per centum of the capital stock.

A majority of the shares of stock must at all times, be held and owned by (a) citizens of the United States; (b) corporations, the controlling interest in which is owned by citizens of the United States, chartered under Federal or state laws; or (c) firms or companies, the controlling interest in which is owned by citizens of the United States.

Purchase of Stock by National Banks

Any national banking association may invest in the stock of such corporations. The aggregate amount of stock held, however, in all corporations engaged in a business of the kind contemplated by the law and by Section 25 of the Federal Reserve Act, as amended, authorizing national banking associations to establish branches in foreign countries, dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, may not exceed 10 per centum of the subscribing bank's capital and surplus.

Directors

All directors are required to be citizens of the United States. A member of the Federal Reserve Board is pro-

hibited from being an officer or director of any such corporation, or of any corporation engaged in similar business organized under state laws, and he may not hold stock in any such corporation.

The provisions of Section 8 of the Act, approved October 15, 1914, as amended, known as the Clayton Anti-Trust Act, prohibiting interlocking directorates, are made applicable to the directors, other officers, agents or employees, of corporations organized under the law. A director or other officer, agent or employee, of any member bank, however, is not prohibited from serving at the same time in any corporation organized under the law in whose capital stock such member bank shall have invested, where such person serves with approval of the Federal Reserve Board. The law, likewise, does not prohibit any director or other officer, agent or employee, of any corporation organized thereunder who has procured the approval of the Federal Reserve Board from serving at the same time in any other corporation in whose capital stock it has invested.

Liability of Stockholders, Officers and Directors

Shareholders in any corporation organized under the provisions of the law are liable for the amount of their

unpaid stock subscriptions. Where it is adjudged that any such corporation has been guilty of noncompliance with or violation of the law, each director and officer who participated in or assented to the illegal acts is made liable in his personal or individual capacity for all damages the corporation sustains thereby; and dissolution of the corporation will not impair any remedy against the corporation, its stockholders or officers for any liability or penalty previously incurred.

General Powers

In addition to the general administrative powers incidental to organization, corporations, under regulations prescribed by the Federal Reserve Board, are granted general banking powers, as follows:

(1) To purchase, sell, discount and negotiate with or without their endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers and other evidences of indebtedness;

(2) To purchase and sell, with or without their endorsement or guaranty, securities, including the obligations of the United States or any state thereof, but not including shares of stock, except as hereafter explained in the paragraph entitled "Power to Purchase and Hold Stock;"

(3) To accept bills or drafts drawn upon them subject to such limitations and restrictions as the Federal Reserve Board may impose;

(4) To issue letters of credit;

(5) To purchase and sell coin, bullion and exchange;

(6) To borrow and lend money;

(7) To issue debentures, bonds and promissory notes under such general conditions as to security and under such limitations as the Federal Reserve Board may prescribe, but in no event having liabilities outstanding thereon at any one time exceeding ten times the capital stock and surplus of the issuing corporation;

(8) To receive deposits outside of the United States and only such deposits within the United States as may be incidental to, or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States; but a corporation receiving authorized deposits in the United States must carry reserves in such amounts as the Federal Reserve Board may prescribe, in no event less than 10 per centum of its deposits;

(9) To exercise such powers in general as are incidental to those conferred by the law, or such as in the opinion of the Federal Reserve Board,

may be usual in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies or possessions in which they are transacting business and which are not inconsistent with the powers specifically granted by the law.

None of the powers conferred are to be construed as prohibiting the Federal Reserve Board, under its power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by any such corporation and outstanding at any one time.

Establishment of Agencies and Branches

Corporations are authorized, under prescribed regulations, to establish and maintain for the transaction of their business, branches or agencies in foreign countries, their dependencies or colonies, and in the dependencies or insular possessions of the United States, at such places as may be approved by the Federal Reserve Board.

Power to Purchase and Hold Stock

With the consent of the Federal Reserve Board, a corporation may purchase and hold stock or other certifi-

cates of ownership in any other corporation similarly organized under the Edge Act, or under the laws of any foreign country, colony or dependency, or of any state, dependency or insular possession of the United States, where such corporation is not engaged in the general business of buying or selling goods, wares, merchandise or commodities in the United States and transacts only such business in the United States as in the judgment of the Federal Reserve Board is incidental to its international or foreign business. No corporation, however, organized under the law may invest in any one corporation an amount in excess of 10 per centum of its own capital and surplus, except in a corporation engaged in the business of banking (in which case 15 per centum of its capital and surplus may be so invested) without the approval of the Federal Reserve Board, nor purchase, own or hold stock or certificates of ownership in any other corporation organized under the law or under the laws of any state, which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing corporation. These limitations, however, do not prevent corporations organized under the law from purchasing and holding stock in any corporation where such purchase is necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations organized under the law shall be disposed of at public or private sale within six months

thereafter, unless the time is extended by the Federal Reserve Board.

Limitations on Scope of Activities

None of the powers conferred by the law, except those incidental and preliminary to organization, may be exercised until the corporation is duly authorized by the Federal Reserve Board to commence business. Corporations organized under the law may not become members of the Federal Reserve System and are prohibited from carrying on any part of their business activities in the United States, except such as in the opinion of the Federal Reserve Board is incidental to their international or foreign business. They are prohibited from engaging in commerce or trade in commodities and from directly or indirectly controlling, fixing or attempting to control or fix the prices thereof. A corporation violating this provision is subject to forfeiture of its charter, and any director, officer, agent or employee thereof using or conspiring to use the credit, funds or power of the corporation to fix or control the price of such commodities, is liable to a fine of not less than $1,000 and not more than $5,000, or imprisonment for not less than one year and not more than five years, or both.

Conversion of State Institutions

Any banking institution principally engaged in foreign business incorporated by special law of the United States, or any state, or organized under the general laws of either, having an unimpaired capital sufficient to entitle it to become a corporation under the provisions of the Edge Act may, by vote of the stockholders owning not less than two-thirds of the capital stock, upon approval of the Federal Reserve Board, be converted into a Federal corporation of the kind authorized, with any name approved by the Federal Reserve Board, where such conversion is not made in contravention of the state law. The articles of association and the organization certificate may be executed by a majority of the directors of the banking institution, the certificate containing a declaration that the owners of at least two-thirds of the capital stock have authorized the directors to make such certificate and to convert the institution into a Federal corporation. Other details in connection with the procedure to be followed in such cases are prescribed by the law. The shares of stock may continue to be for the same amount each as they were before the conversion and the directors may continue in office until others are elected or appointed, in accordance with the provisions of the law. Such corporations, upon compliance with the prescribed formalities, acquire all the powers and privileges, have the same duties and are subject to

the same liabilities and regulations as are prescribed for corporations originally organized as Federal corporations under the statute.

Forfeiture of Franchise

The rights, privileges and franchises derived from incorporation under the law may be forfeited by failure of the corporation to comply with its provisions, but before any such corporation is declared dissolved or its rights, privileges and franchises forfeited, the noncompliance with or violation of the law must be determined by a proper court of the United States in a suit brought for that purpose, in the district or territory in which the home office is located, the suit being instituted by the Federal Reserve Board or by the Attorney General of the United States.

Insolvency and Receivership

Whenever the Federal Reserve Board becomes satisfied of the insolvency of any such corporation, it may appoint a receiver to take possession of all the property and assets, exercising the same powers with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller of the Currency. Any assets, however, subject to the laws of other countries or jurisdictions shall be dealt with in accordance with the terms of such laws.

Taxation

Corporations are subject to tax by the state in which the home office is located to the same extent as other corporations organized under the laws of that state and transacting a similar character of business. The shares of stock are subject to tax as the personal property of the owners or holders to the same extent as shares of stock in similar state corporations.

Penalties

Officers, directors, employees or agents are liable to imprisonment of from two to ten years, and a fine of not more than $5,000, in the discretion of the court, for embezzlement or misuse of funds, or issuing without authority certificates of deposit, drawing bills of exchange, making acceptances, assigning negotiable or non-negotiable instruments, or making false entries in books or reports of the corporation with intent to injure, defraud or deceive. Similar offenses by a receiver of a corporation or by his employees involving trust funds or by any person aiding or abetting in the commission of any of the above offenses are punishable in like manner.

Any person connected with a corporation who represents that the United States is liable for the payment of any bonds or other obligations or the interest thereon

issued or incurred by any corporation organized under the law, or that the United States incurs any liability for any act or omission of the corporation, is liable to a fine of not more than $10,000 and imprisonment for not exceeding five years.

The Edge Act

Approved December 24, 1919

An Act

To amend the Act approved December 23, 1913, known as the Federal Reserve Act.

BE IT enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act approved December 23, 1913, known as the Federal Reserve Act, as amended, be further amended by adding a new section as follows:

"BANKING CORPORATIONS AUTHORIZED TO DO FOREIGN BANKING BUSINESS.

"Sec. 25 (a). Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this section, and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five.

"Such persons shall enter into articles of association which shall specify in general terms the objects for which the association is

formed and may contain any other provisions not inconsistent with law which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.

"Such articles of association shall be signed by all of the persons intending to participate in the organization of the corporation and, thereafter, shall be forwarded to the Federal Reserve Board and shall be filed and preserved in its office. The persons signing the said articles of association shall, under their hands, make an organization certificate which shall specifically state:

"First. The name assumed by such corporation, which shall be subject to the approval of the Federal Reserve Board.

"Second. The place or places where its operations are to be carried on.

"Third. The place in the United States where its home office is to be located.

"Fourth. The amount of its capital stock and the number of shares into which the same shall be divided.

"Fifth. The names and places of business or residence of the persons executing the certificate and the number of shares to which each has subscribed.

"Sixth. The fact that the certificate is made to enable the persons subscribing the same, and all other persons, firms, companies, and corporations, who or which may thereafter subscribe to or purchase shares of the capital stock of such corporation, to avail themselves of the advantages of this section.

"The persons signing the organization certificate shall duly acknowledge the execution thereof before a judge of some court of record or notary public, who shall certify thereto under the seal of such court or notary, and thereafter the certificate shall be forwarded to the Federal Reserve Board to be filed and preserved in its office. Upon duly making and filing articles of association and an organization certificate, and after the Federal Reserve Board has approved the same and issued a permit to begin business, the association shall become and be a body corporate, and as such and in the name designated therein shall have power to adopt and use a corporate seal,

which may be changed at the pleasure of its board of directors; to have succession for a period of twenty years unless sooner dissolved by the act of the shareholders owning two-thirds of the stock or by an Act of Congress or unless its franchises become forfeited by some violation of law; to make contracts; to sue and be sued, complain, and defend in any court of law or equity; to elect or appoint directors, all of whom shall be citizens of the United States; and, by its board of directors, to appoint such officers and employees as may be deemed proper, define their authority and duties, require bonds of them, and fix the penalty thereof, dismiss such officers or employees, or any thereof, at pleasure and appoint others to fill their places; to prescribe, by its board of directors, by-laws not inconsistent with law or with the regulations of the Federal Reserve Board regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers and employees appointed, its property transferred, and the privileges granted to it by law exercised and enjoyed.

"Each corporation so organized shall have power, under such rules and regulations as the Federal Reserve Board may prescribe:

"(a) To purchase, sell, discount, and negotiate, with or without its indorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its indorsement or guaranty, securities, including the obligations of the United States or of any State thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the Federal Reserve Board may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the Federal Reserve Board may prescribe, but in no event having liabilities outstanding thereon at any one time exceeding ten times its capital stock and surplus; to receive deposits outside of the United States and to receive only such deposits within the United States as may be incidental to or for the purpose of carrying out transac-

tions in foreign countries or dependencies or insular possessions of the United States; and generally to exercise such powers as are incidental to the powers conferred by this Act or as may be usual, in the determination of the Federal Reserve Board, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the powers specifically granted herein. Nothing contained in this section shall be construed to prohibit the Federal Reserve Board, under its power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time. Whenever a corporation organized under this section receives deposits in the United States authorized by this section it shall carry reserves in such amounts as the Federal Reserve Board may prescribe, but in no event less than 10 per centum of its deposits.

"(b) To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in the dependencies or insular possessions of the United States, at such places as may be approved by the Federal Reserve Board and under such rules and regulations as it may prescribe, including countries or dependencies not specified in the original organization certificate.

"(c) With the consent of the Federal Reserve Board to purchase and hold stock or other certificates of ownership in any other corporation organized under the provisions of this section, or under the laws of any foreign country or a colony or dependency thereof, or under the laws of any State, dependency or insular possession of the United States but not engaged in the general business of buying or selling goods, wares, merchandise or commodities in the United States and not transacting any business in the United States except such as in the judgment of the Federal Reserve Board may be incidental to its international or foreign business: *Provided, however,* That, except with the approval of the Federal Reserve Board, no corporation organized hereunder shall invest in any one corporation

an amount in excess of 10 per centum of its own capital and surplus, except in a corporation engaged in the business of banking, when 15 per centum of its capital and surplus may be so invested: *Provided further*, That no corporation organized hereunder shall purchase, own, or hold stock or certificates of ownership in any other corporation organized hereunder or under the laws of any State which is in substantial competition therewith, or which holds stock or certificates or ownership in corporations which are in substantial competition with the purchasing corporation.

"Nothing contained herein shall prevent corporations organized hereunder from purchasing and holding stock in any corporation where such purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations organized under this section shall within six months from such purchase be sold or disposed of at public or private sale unless the time to so dispose of same is extended by the Federal Reserve Board.

"No corporation organized under this section shall carry on any part of its business in the United States except such as, in the judgment of the Federal Reserve Board, shall be incidental to its international or foreign business: *And provided further*, That except such as is incidental and preliminary to its organization no such corporation shall exercise any of the powers conferred by this section until it has been duly authorized by the Federal Reserve Board to commence business as a corporation organized under the provisions of this section.

"No corporation organized under this section shall engage in commerce or trade in commodities except as specifically provided in this section, nor shall it either directly or indirectly control or fix or attempt to control or fix the price of any such commodities. The charter of any corporation violating this provision shall be subject to forfeiture in the manner hereinafter provided in this section. It shall be unlawful for any director, officer, agent, or employee of any such corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of

any such commodities, and any such person violating this provision shall be liable to a fine of not less than $1,000 and not exceeding $5,000 or imprisonment not less than one year and not exceeding five years, or both, in the discretion of the court.

"No corporation shall be organized under the provisions of this section with a capital stock of less than $2,000,000, one-quarter of which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of such corporation shall be paid in installments of at least 10 per centum on the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of its business operations, until the whole of the capital stock shall be paid in. The capital stock of any such corporation may be increased at any time, with the approval of the Federal Reserve Board, by a vote of two-thirds of its shareholders or by unanimous consent in writing of the shareholders without a meeting and without a formal vote, but any such increase of capital shall be fully paid in within ninety days after such approval; and may be reduced in like manner, provided that in no event shall it be less than $2,000,000. No corporation, except as herein provided, shall during the time it shall continue its operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. Any national banking association may invest in the stock of any corporation organized under the provisions of this section, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this section and in section 25 of the Federal Reserve Act as amended shall not exceed 10 per centum of the subscribing bank's capital and surplus.

"A majority of the shares of the capital stock of any such corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies, the controlling interest in which is owned by citizens

of the United States. The provisions of section 8 of the Act approved October 15, 1914, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' as amended by the Acts of May 15, 1916, and September 7, 1916, shall be construed to apply to the directors, other officers, agents, or employees of corporations organized under the provisions of this section : *Provided, however,* That nothing herein contained shall (1) prohibit any director or other officer, agent or employee of any member bank, who has procured the approval of the Federal Reserve Board from serving at the same time as a director or other officer, agent or employee of any corporation organized under the provisions of this section in whose capital stock such member bank shall have invested; or (2) prohibit any director or other officer, agent, or employee of any corporation organized under the provisions of this section, who has procured the approval of the Federal Reserve Board, from serving at the same time as a director or other officer, agent or employee of any other corporation in whose capital stock such first mentioned corporation shall have invested under the provisions of this section.

"No member of the Federal Reserve Board shall be an officer or director of any corporation organized under the provisions of this section, or of any corporation engaged in similar business organized under the laws of any State, nor hold stock in any such corporation, and before entering upon his duties as a member of the Federal Reserve Board he shall certify under oath to the Secretary of the Treasury that he has complied with this requirement.

"Shareholders in any corporation organized under the provisions of this section shall be liable for the amount of their unpaid stock subscriptions. No such corporation shall become a member of any Federal reserve bank.

"Should any corporation organized hereunder violate or fail to comply with any of the provisions of this section, all of its rights, privileges, and franchises derived herefrom may thereby be forfeited. Before any such corporation shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with, or

violation of such laws shall, however, be determined and adjudged by a court of the United States of competent jurisdiction, in a suit brought for that purpose in the district or territory in which the home office of such corporation is located, which suit shall be brought by the United States at the instance of the Federal Reserve Board or the Attorney General. Upon adjudication of such noncompliance or violation, each director and officer who participated in, or assented to, the illegal act or acts, shall be liable in his personal or individual capacity for all damages which the said corporation shall have sustained in consequence thereof. No dissolution shall take away or impair any remedy against the corporation, its stockholders, or officers for any liability or penalty previously incurred.

"Any such corporation may go into voluntary liquidation and be closed by a vote of its shareholders owning two-thirds of its stock.

"Whenever the Federal Reserve Board shall become satisfied of the insolvency of any such corporation, it may appoint a receiver who shall take possession of all of the property and assets of the corporation and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller of the Currency of the United States: *Provided, however,* That the assets of the corporation subject to the laws of other countries or jurisdictions shall be dealt with in accordance with the terms of such laws.

"Every corporation organized under the provisions of this section shall hold a meeting of its stockholders annually upon a date fixed in its by-laws, such meeting to be held at its home office in the United States. Every such corporation shall keep at its home office books containing the names of all stockholders thereof, and the names and addresses of the members of its board of directors, together with copies of all reports made by it to the Federal Reserve Board. Every such corporation shall make reports to the Federal Reserve Board at such times and in such form as it may require; and shall be subject to examination once a year and at such other times as may be deemed necessary by the Federal Reserve Board by examiners appointed by the Federal Reserve Board, the cost of such examina-

tions, including the compensation of the examiners, to be fixed by the Federal Reserve Board and to be paid by the corporation examined.

"The directors of any corporation organized under the provisions of this section may, semiannually, declare a dividend of so much of the net profits of the corporation as they shall judge expedient; but each corporation shall, before the declaration of a dividend, carry one-tenth of its net profits of the preceding half year to its surplus fund until the same shall amount to 20 per centum of its capital stock.

"Any corporation organized under the provisions of this section shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business. The shares of stock in such corporation shall also be subject to tax as the personal property of the owners or holders thereof in the same manner and to the same extent as the shares of stock in similar State corporations.

"Any corporation organized under the provisions of this section may at any time within the two years next previous to the date of the expiration of its corporate existence, by a vote of the shareholders owning two-thirds of its stock, apply to the Federal Reserve Board for its approval to extend the period of its corporate existence for a term of not more than twenty years, and upon certified approval of the Federal Reserve Board such corporation shall have its corporate existence for such extended period unless sooner dissolved by the act of the shareholders owning two-thirds of its stock, or by an act of Congress or unless its franchise becomes forfeited by some violation of law.

"Any bank or banking institution principally engaged in foreign business incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a corporation under the provisions of this section may, by the vote of the shareholders owning not less than two-thirds of

the capital stock of such bank or banking association, with the approval of the Federal Reserve Board, be converted into a Federal corporation of the kind authorized by this section with any name approved by the Federal Reserve Board: *Provided, however,* That said conversion shall not be in contravention of the State law. In such case the articles of association and organization certificate may be executed by a majority of the directors of the bank or banking institution, and the certificate shall declare that the owners of at least two-thirds of the capital stock have authorized the directors to make such certificate and to change or convert the bank or banking institution into a Federal corporation. A majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a Federal corporation. The shares of any such corporation may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the corporation until others are elected or appointed in accordance with the provisions of this section. When the Federal Reserve Board has given to such corporation a certificate that the provisions of this section have been complied with, such corporation and all its stockholders, officers, and employees, shall have the same powers and privileges, and shall be subject to the same duties, liabilities, and regulations, in all respects, as shall have been prescribed by this section for corporations originally organized hereunder.

"Every officer, director, clerk, employee, or agent of any corporation organized under this section who embezzles, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, evidences of indebtedness or assets of any character of such corporation; or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, debenture, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of such corporation with intent, in either case, to injure or defraud such corporation or any

other company, body politic or corporate, or any individual person, or to deceive any officer of such corporation, the Federal Reserve Board, or any agent or examiner appointed to examine the affairs of any such corporation; and every receiver of any such corporation and every clerk or employee of such receiver who shall embezzle, abstract, or willfully misapply or wrongfully convert to his own use any moneys, funds, credits, or assets of any character which may come into his possession or under his control in the execution of his trust or the performance of the duties of his employment; and every such receiver or clerk or employee of such receiver who shall, with intent to injure or defraud any person, body politic or corporate, or to deceive or mislead the Federal Reserve Board, or any agent or examiner appointed to examine the affairs of such receiver, shall make any false entry in any book, report, or record of any matter connected with the duties of such receiver; and every person who with like intent aids or abets any officer, director, clerk, employee, or agent of any corporation organized under this section, or receiver or clerk or employee of such receiver as aforesaid in any violation of this section, shall upon conviction thereof be imprisoned for not less than two years nor more than ten years, and may also be fined not more than $5,000, in the discretion of the court.

"Whoever being connected in any capacity with any corporation organized under this section represents in any way that the United States is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any corporation organized hereunder, or that the United States incurs any liability in respect of any act or omission of the corporation, shall be punished by a fine of not more than $10,000 and by imprisonment for not more than five years."